No. 14418.

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

BASILIKI ANDRE GIANNOULIAS,

Appellant,

vs.

HERMAN R. LANDON, as District Director, Immigration and Naturalization Service, Los Angeles District,

Appellee.

BRIEF FOR APPELLEE.

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BRIEF FOR APPELLEE.

Jurisdiction.

This matter arose on a Petition for a Writ of Habeas Corpus in the United States District Court for the Southern District of California, Central Division. The Writ was denied and the Order to Show Cause was discharged.

The District Court had jurisdiction of the matter under Title 28 U. S. C. A. 2241 and this Court has jurisdiction to review the final order on appeal under Section 28 United States Code 2253.

Statute Involved.

Section 213a of Title 8 U. S. C. A. provided as follows:

> "213a. Deportation of alien securing visa through fraudulent marriage.
>
> Any alien who at any time after entering the United States is found to have secured either non-quota or preference-quota visa through fraud, by contracting a marriage which, subsequent to entry into the United States, has been judicially annulled retroactively to date of marriage, shall be taken into custody and deported pursuant to the provisions of section 214 of this title on the ground that at time of entry he was not entitled to admission on the visa present upon arrival in the United States. This section shall be effective whether entry was made before or after May 14, 1937.
>
> When it appears that the immigrant fails or refuses to fulfill his promises for a marital agreement made to procure his entry as an immigrant he then becomes immediately subject to deportation."

The instant case is within the purview of the second paragraph of the foregoing statute.

(The 1952 Immigration and Naturalization Act re-enacted the above section as subdivision (2) of subdivision (c) of Section 1251 of Title 8, United States Code, making some changes in the wording but retaining the same legal effect.)

Statement of the Case.

The appellant, born in Greece on July 16, 1912 and a native and citizen thereof, entered the United States by way of Miami, Florida, on April 13, 1950, after contracting a marriage with an American citizen, John Petros Fitsos, at Nassau, Bahama Island, on March 27, 1950 [Tr. 28].

Arrangements for the marriage arose as a result of discussions between appellant's brother, Theodore Giannoulias, and one, George Fitsos, the brother of John Fitsos. Both Theodore and George were employees of the same restaurant in Los Angeles [Tr. 150]. George's brother desired to get married and Theodore had an unmarried sister in Greece. Consequently, the discussions led to the sister (appellant) being brought to Nassau. John Fitsos proceeded to Nassau where he married appellant in a civil ceremony, John having spent some $700 of his own funds to bring the appellant over from Greece [Tr. 50, 231].

Some three weeks after the marriage, appellant's visa was secured from the American Consul in Nassau [Tr. 227], and the next day, on April 13, 1950, the appellant and her groom entered the United States at Miami, Florida, the appellant being admitted as a nonquota immigrant under Section 4(a) of the Immigration Act of 1924 (8 U. S. C. 204) as "the wife * * * of a citizen of the United States * * *" [Tr. 50].

According to both the statements of appellant and the husband, John Fitsos, he was desirous of consummating the marriage before arriving in the United States, but bowed to the appellant's wishes that they not assume the man and wife relationship until after they were married in the Greek Orthodox Church in Los Angeles [Tr. 72].

Upon arriving in the United States, the appellant proceeded to the home of her brother, Theodore Giannoulias, in Los Angeles, California, while the groom, John Fitsos, went to Malone, New York, to take care of some business. He proceeded to Los Angeles some 10 days later and contacted the appellant and her brother. Both the appellant and the witnesses generally agree as to the facts up to this point, but they disagree as to the events thereafter.

The groom, John Fitsos, testified that after arriving in Los Angeles, the appellant refused to marry him by church ceremony or be his wife until he showed that he was in possession of certain moneys, properties and established in business [Tr. 232, 254-260]. His testimony as to these financial demands is corroborated by the testimony of his brother, George Fitsos [Tr. 184-192].

The appellant, on the other hand, has testified that upon arrival in Los Angeles, John Fitsos was cool, indifferent and reluctant to enter into the agreements previously made. Her testimony is corroborated by that of her brother Theodore Giannoulias.

John Fitsos had married the appellant at Nassau, had spent over $700 to bring her there, had come from Malone, New York to Los Angeles for the sole reason of going through with the marriage, and had nothing to gain other than a wife.

The appellant, however, had been seeking for 14 years to come to the United States [Tr. 117] and there were still some 6,000 ahead of her on the quota list in 1950 that were entitled to prior consideration because of their earlier application [Tr. 289-290].

John Fitsos filed a suit for annulment of the marriage in California in the Los Angeles Superior Court on

May 18, 1950 [Tr. 210]. The appellant filed a suit for divorce from Fitsos on September 8, 1950 in the State of Nevada, and she was granted a divorce the same day [Tr. 219, 223]. Thereafter Fitsos dismissed his suit for annulment on September 14, 1950. He had been told that the appellant would fight the annulment suit, and that he would have to pay court costs and his attorney advised that he let the appellant go to Reno and get the divorce [Tr. 238].

The warrant for the arrest of appellant was issued by the Immigration and Naturalization Service on November 15, 1950, and served upon her on November 27, 1950 [Tr. 182, 183]. After hearings before the officers of the Immigration and Naturalization Service on January 4, 1951, February 8, 1951 and April 16, 1952, the appellant was ordered deported on the following charge:

> "The Act of May 14, 1937, in that, at the time of entry, she was not entitled to admission on the non-quota visa which she presented upon arrival for the reason that such visa was obtained through fraud, in that she contracted a marriage to procure entry to the United States as an immigrant and failed or refused, after entry, to fulfill her promises for such marital agreement."

The Order of Deportation was affirmed by the Acting Assistant Commissioner of Immigration on May 23, 1952 and sustained on appeal by the Board of Immigration Appeals on July 9, 1953 [Tr. 54]. The warrant for her deportation was issued on July 31, 1952 [Tr. 49].

Appellant was thereafter taken into custody and a Petition for Writ of Habeas Corpus followed [Tr. 3-9]. Upon the Writ being denied [Tr. 28-39] this appeal followed.

ARGUMENT.

I.

The Statute Is Not Vague and Uncertain.

The first point raised by the appellant is that the statute is unconstitutional because of vagueness and uncertainty. Appellant asks specifically "What did the legislators mean by the phrase 'promise for a marital agreement?' "

Throughout the lower court's "Memorandum for Order" [Tr. 28-33], the Judge uses the language "marital agreement, *i. e.* marriage" and paraphrases this section [Tr. 32]: "The petitioner failed and refused to fulfill her promises made in connection with the marital agreement [*i. e.,* the marriage], which was made to procure her entry as an immigrant."

The language is further clarified when modified with the phrase in the statute immediately following the words "marital agreement" which then make the phrase read "fails or refuses to fulfill his promises for a marital agreement *made to procure his entry as an immigrant.*" (Emphasis added.)

What kind of a marital agreement that one could make "promises for" could *procure his entry as an immigrant?* Under the law a quota immigrant could gain immediate entry as a non-quota immigrant as "the wife of a citizen of the United States." No other type of marital agreement except "marriage" would have the effect of procuring entry as an immigrant.

Thus, common sense gives that interpretation to the statute which was given by the Solicitor of Labor, quoted at page 14 of the appellant's brief as excerpted from the

appendix to appellant's brief "when the marriage of a citizen to an alien results in the alien's spouse being admitted to the United States under a non-quota or preference-quota status, *the alien's failure to continue to maintain and keep the marital status intact* for some reason that is traceable back to the inception of the marriage and establishes the marriage, to have been fraudulent from its very beginning, the alien's spouse may be made the subject of deportation proceedings." (Emphasis added.)

The Judge of the lower court states [Tr. 29]:

> "I find nothing in the terms of the statute or upon its face which suggests that degree of ambiguity or uncertainty required to hold an Act of Congress unconstitutional."

The Court goes on later to use the language [Tr. 31]:

> "From the plain reading of the Section it is the failure and refusal to keep the promises for a marital agreement, not the agreement itself or any virtue or fault of the marital agreement itself, which the Act condemns."

Thus the Court gives the clear reading of the simple language of the statute with "marital agreement" meaning "marriage" and "promises for a marital agreement" meaning in effect—the marriage vows.

The Supreme Court has said that not only the "context of the language in question" [*American Communications Ass'n v. Douds,* 339 U. S. 382 at 412] but "the entire text of the statute" [*Winters v. New York,* 333 U. S. 507, 518] are to be considered in determining whether a statute is too vague. Obviously then, it is proper to take into account the modifying words "made to procure his entry as an immigrant" in the same paragraph, when it

indicates clearly what is meant by the language in question. It has already been noted that the only marital agreement which could procure entry as an immigrant would be marriage to an American citizen. Thus, "promises for a marital agreement" can only mean that the immigrant failed or refused to fulfill the marriage.

By the same language of the Supreme Court, quoted in the preceding paragraph, it is proper to take into account the first paragraph of said statute which refers to securing a non-quota visa by "contracting a marriage which, subsequent to entry into the United States, has been judicially annulled * * *."

Thus, in reading "the entire text of the statute", we see that the first paragraph of Section 213a applies to a marriage subsequently annulled whereas the second paragraph of 213a, the one herein question, refers to a marriage which the defaulting party fails or refuses to fulfill.

Hence the test as laid down by the Supreme Court is whether a statute is so vague that it does not convey a "sufficiently definite warning as to the prescribed conduct when measured by common understanding and practices."

Jordan v. DeGeorge, 341 U. S. 223, 231, 232;

Connally v. General Construction Company, 269 U. S. 385, 391;

Dennis v. United States, 341 U. S. 494, 515.

In applying this test the Supreme Court has declared:

1. That the presence of difficult "borderline" or "peripheral" cases does not invalidate a statutory provision where there is a hard core of circumstances to which the statute unquestionably applies and as to which the ordinary person would have no doubt as to its application.

2. That it is proper to look at "the entire text of the statute."

3. That the "particular context is all important" and

4. That the inquiry is whether the statute is sufficiently explicit to inform those "who are subject to it, those to whom the statute is directed."

Believing that this Court may desire to refer to the entire text of the Congressional Record pertaining to the statute rather than the quotations set out by the appellant's brief, appellee has included as an appendix to this brief the complete Congressional Record pertaining to the legislation in question.

Appellant next urges that the statute in using the masculin gender has confined its application to male immigrants.

The lower court answers this contention by a statement in his Memorandum for Order "The Act of 1937 is to be interpreted according to the provisions of Title I, United States Code, §1 which states, *inter-alia,* 'words importing the masculine gender may be applied to females.' "

Here too we look to "the entire text of the statute" which begins: "Any alien who at any time * * *". It should be noted that the language does not say "any *male* alien" and referring to the second paragraph of 213a which states "when it appears that the immigrant fails * * *" it does not say "when it appears that the *male* immigrant * * *—"

This Court had occasion to interpret another statute that it was contended was void for vagueness, to-wit: 8 U. S. C. A. 144(a)(2) dealing with transportation of aliens within the United States. The case in question

which this Court decided was *Faustina Herrera v. United States of America* decided November 19, 1953, 208 F. 2d 215. This Court there upheld the validity of the statute and in so doing stated at page 217:

> "Thus it is manifest that the 'he' and 'his' of paragraph (2) refer to the phrase 'any alien' * * *"

Thus, in the same context, it would be ridiculous to state that the statute prohibiting transportation of aliens applied only to male aliens or male transporters. Likewise in the instant statute the contention would be as ridiculous.

II.

There Is Reasonable Substantial and Probative Evidence Supporting the Deportation Charge Against Appellant.

Appellee does not disagree with appellant's contention that an order of deportation must be supported by some substantial and probative evidence.

Taking this record as a whole, it is obvious that the appellant's primary desire was "to get here". She was some 6000 down on the list of immigrant applications. She had waited some 14 years to come to the United States and her chances of entry as a quota immigrant were very slim during her lifetime. The marirage was merely a means to an end, the end being entry into the United States and the opportunity to live in Los Angeles with her brother.

Contrast this with the conduct of the groom John Fitsos. He wanted to get married. He advanced over $700 of his own funds to bring his intended bride to

Nassau. He married her at Nassau and sought to consummate the marriage. He had been in business for many years around Washington, D. C. and Malone, New York, places that he knew and was familiar with. He made a trip to Los Angeles which could only be motivated by his desire to consummate the marriage. It has not been shown that there was any other reason for the trip.

These facts are again stated because here we have two diametrically opposed and conflicting stories relating to the consummation of the marriage. One is that of Fritsos, the other is that of the appellant. The officers of the Immigration and Naturalization Service considering the demeanor and motives of the parties, believed Fitsos and not the appellant. As stated by the lower Court:

> "Thus, there is ample support in the evidence for the conclusion that the petition had knowledge that she was, to say the least, not near the top of the quota list." [Tr. 32.]

The lower court goes on to say:

> "It is sufficient to say that from an examination of the whole record this Court is unable to say that there was not substantial evidence to support the conclusions of the Commissioner that the petitioner failed and refused to fulfill her promises made in connection with the marital agreement (*i.e.* the marriage) which was made to procure her entry as an immigrant."

Thus, there is substantial evidence in the record to support the finding that the appellant desired to come to Los Angeles to reside near her brother, that she married to gain entry and refused to fulfill her marital vows unless her husband met her demands and agreed to reside in

Los Angeles. The marriage was but a means to an end and the fraud practiced was not alone upon Fitsos but upon the Immigration authorities, a fraud traceable back to the inception of the marriage—a fraud perpetrated "solely to fraudulently expedite admission to the United States."

III.
The Deportation Hearings Were Fair.

Appellant contends that appellant's hearings were unfair because a State Department communication was placed in evidence without permitting appellant to see all of the communications of the State Department that might have had a bearing upon the same issue.

This is specious reasoning since any communication of the State Department showing the appellant's hopeless position upon the quota lists would negative appellant's statement that she was told that she would soon be "among the first" to come to the United States. Consular Officers are not known to hold out hope to an immigrant applicant when she is some 6000 down the list.

IV.
Credibility.

As stated by Judge Byrne in the case of *Acosta v. Landon,* 125 Fed. Supp. 434 at page 438:

> "Credibility of witnesses is ordinarily to be determined by the trier of facts, in this instance the inquiry officer. *Morikichi Suwa v. Carr,* Ninth Circuit 1937, 88 F. 2d 119. It is the inquiry officer in a deportation proceeding who is in a position to

observe the demeanor of witnesses, and his decision on the question of credibility should therefore rarely be disturbed."

Judge Byrne goes on to state in the same case and on the same page:

"Though this Court might have taken a different view of the testimony had the matter been before it *de novo,* it cannot be said that Chase's testimony was so improbable as to be unworthy of belief. Under such circumstances, this Court is obliged to accept the inquiry officer's findings."

Thus, in the case at bar, the lower court was obliged to accept the Inquiry Officer's findings, though the Court might have taken a different view were it trying the case. The witnesses are not before this Court and unless Fitsos' testimony were so improbable as to be unworthy of belief, this Court is obliged to accept the Inquiry Officer's findings.

V.
Scope of the Inquiry.

While the last section of this brief dealt with credibility, it ties in with the scope of the inquiry in a habeas corpus proceeding which is limited to a determination as to whether or not the proceedings were fair, if error of law was committed and if there is evidence of a substantial nature to support the findings of the Commissioner.

Eagles v. Samuels, 329 U. S. 304 and cases there cited.

The District Court found specifically on the points enumerated above within the scope of the inquiry and con-

cluded as a matter of law that the necessary conditions were met.

WHEREFORE, for the foregoing reasons, appellee requests that the judgment of the District Court be affirmed.

Respectfully submitted,

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APPENDIX.

Pages 3013 to 3016, Inclusive, of the Congressional Record—House, for Wednesday, March 17, 1937, Being Volume 81, No. 53.

[3013]

Deportation of Certain Aliens Who Fraudulently Marry Citizens of the United States.

Mr. Dickstein (when the Committee on Immigration and Naturalization was called). Mr. Speaker, by direction of the Committee on Immigration and Naturalization, I call up H. R. 28, to authorize the deportation of aliens who secured preference-quota or non-quota visas through fraud by contracting marriage solely to fraudulently expedite admission to the United States, and for other purposes.

The Clerk read the title of the bill.

Mr. Dickstein. Mr. Speaker, I ask unanimous consent that this bill may be considered in the House as in Committee of the Whole.

The Speaker. Is there objection?

There was no objection.

The Clerk read the bill, as follows:

Be it enacted, etc., That subdivision (f) of section 9 of the Immigration Act of 1924, as amended (43 Stat. 158; U. S. C., title 8, sec. 209, subdivision (f), is amended to read as follows:

"Sec. 9. (f) Nothing in this section shall be construed to entitle an immigrant, in respect of whom a petition under this section is granted, either to enter the United States as a nonquota immigrant if, upon arrival in the United States, he is found not to be a nonquota immigrant, or to enter the United States as a preference-quota immi-

grant if, upon arrival in the United States, he is found not to be a preference-quota immigrant."

Sec. 2. That subdivision (a) of section 13 of the Immigration Act of 1924, as amended (43 Stat. 161; U. S. C., title 8, sec. 213 (a)), is amended to read as follows:

"No immigrant shall be admitted to the United States unless he (1) has an unexpired immigration visa or was born subsequent to the issuance of the immigration visa of the accompanying parent; (2) is of the nationality specified in the visa in the immigration visa; (3) is a non-quota immigrant if specified in the visa in the immigration visa as such; (4) is a preference-quota immigrant if specified in the visa in the immigration visa as such; and (5) is otherwise admissible under the immigration laws."

Sec. 3. That any alien who at any time after entering the United States is found to have secured either non-quota or preference-quota visa through fraud, by contracting a marriage which, subsequent to entry into the United States, has been judicially annulled retroactively to date of marriage, shall be taken into custody and deported pursuant to the provisions of section 14 of the immigration Act of 1924 on the ground that at time of entry he was not entitled to admission on the visa presented upon arrival in the United States. This section shall be effective whether entry was made before or after the enactment of this act.

Mr. Dickstein. Mr. Speaker, this bill comes from the committee unanimously. It has the endorsement of the Department.

This bill will simply add another section providing for deportation of any alien who contracts a marriage by fraud for the purpose of coming to the United States un-

der the quota. It is what is commonly known as the "gigolo" bill. We found a number of so-called aliens who could not possibly enter this country because of quota conditions, who have contracted a marriage which, in itself, was fraudulent, for the purpose of evading the immigration law. This bill has the highest recommendation from this committee for favorable action.

Mr. Jenkins of Ohio. Mr. Speaker, will the gentleman yield?

Mr. Dickstein. I yield.

Mr. Jenkins of Ohio. I wish the gentleman would explain how the bill would work, for his statement is rather general. Will he give us an illustration of how a person can get here through fraudulent marriage?

Mr. Dickstein. Let us take a country the quota of which is very small. A man in that country wishes to come into this country. He needs a preference status. If he marries an American citizen, an American woman, the woman honestly believing that he is sincere in this marriage, honestly believing that he is going to live with her as her husband, he is entitled to a preference. Because of the small quotas in these countries, people of those countries have in many instances entered into fraudulent marriage contracts with American citizens simply as a subterfuge to get into this country. When he gets into this country we immediately discover that he had absolutely no intention to live with this woman and did not intend to assume the contractual relationship of husband and wife..

Mr. Jenkins of Ohio. I am a little rusty on these changes in the law. As I understand it, an American male citizen may marry a foreign woman and bring her in as his wife, provided she is in good mental and physical

health and complies with the regulations for good character, and so forth.

Mr. Dickstein. She has to be in perfect health.

Mr. Jenkins of Ohio. But a woman cannot marry a man and bring him in, as I understand it, except that we did pass a law affecting such cases up to about the year 1928, and I think it has been moved up once since then to 1929. What is the limitation now beyond which the marriage does not admit a husband?

[3014]

Mr. Dickstein. Under the acts of 1924 and 1929, where a woman marries an alien, petitions the Department of Labor, proves that she is a citizen, and that she has married an alien, he is entitled to a preference under section 6 of the Immigration Act of 1924 and the amendments thereto. That preference more or less is a first preference.

Mr. Jenkins of Ohio. Does that apply to marriages even up to this date? What is the limitation?

Mr. Dickstein. The exemption ended in 1931.

Mr. Jenkins of Ohio. Let us follow that up a little further. If a woman has married a foreigner since 1931, she cannot bring him in just because he is her husband.

Mr. Dickstein. She cannot bring him in, but she can get him a first preference.

Mr. Jenkins of Ohio. She can make a request to the Department of Labor asking that her husband be put in the class that will be given first preference; but, because he gets in the first-preference class, that does not give her or anybody else the right to bring him in ahead of this class.

Mr. Dickstein. In the first-preference class are put mothers, fathers, wives, and husbands of American citizens.

Mr. Jenkins of Ohio. Let us just follow that up further. If that be the case, suppose an American woman marries a man in Czechoslovakia. If she makes application there that he be put in the first preference class he must be examined by our consular and immigration officers.

Mr. Dickstein. Absolutely. It goes further than that. He must first be examined by the medical officers of the Health Service and show that he is physically fit. He must be examined by the consul, and he must comply with all the laws pertaining to admission.

Mr. Jenkins of Ohio. Then if he passes all these examinations and comes here and it develops that he has not entered into the marital relationship as he should and it develops that he never intended to carry out the marriage contract, then he is put on the deportable list.

[Here the gavel fell.]

Mr. Jenkins of Ohio. Mr. Speaker, I move to strike out the last word in order to follow up the colloquy between the gentleman from New York and myself, which is proving so interesting to me.

Suppose this man is put in the first-preference class, he must come here before we can discover really that he has not or does not intend to carry out his marital agreement. When he gets here what is the next process?

Mr. Dickstein. If he gets into this country, first he must comply with all the requirements just like every other alien—he gets no benefits so far as the law is concerned; but then if he comes in here and the American wife has evidence to show that this man has perpetrated a fraud

upon her for the purpose of making her sign a petition to give him that preference, and he does not enter into and will not consummate any marriage that he contracted on the other side, all she would have to do under the pending bill would be to present this evidence to a court, and if the court decrees that the marriage was procured, obtained, or entered into by fraud, then the Department of Labor will have the right to deport him.

Mr. Jenkins of Ohio. I know that can be done, of course; but suppose this arrangement is made between these two people with criminal intent in the minds of both; in other words, this man simply buys his way into this country by inducing this woman to enter into this contract, what right have the people of this country, what right have the immigration officials when this man has come to this country and not carried out his arrangement, has not lived with this woman, is not her lawful husband, and takes no responsibility of a husband? What is our right under this bill?

Mr. Dickstein. There are other provisions of the 1917 law and the 1924 law to take care of people who actually commit a fraud upon the Government by signing a petition, because they are guilty of fraud in that instance.

Mr. Jenkins of Ohio. That is what I am coming to.

Mr. Dickstein. That has nothing to do with this bill.

Mr. Jenkins of Ohio. There ought to be some provision in that regard. It looks to me like the gentleman is simply playing into the hands of these people because the most trouble we have from what is trying to be cured here comes from men on the other side who buy their way into this country. They induce some woman to go through with this bogus marriage arrangement and never intend to carry it out. She is paid for it, and a woman

could bring a man into this country this month, another man next month, and so on, and could enter into the business of bringing men in. Under this bill she alone must raise the question. If she does not raise the question, we cannot do anything about it.

Mr. Dickstein. The gentleman is developing some other thought and consideration which deals with fraud. That has no bearing on this bill and is not within the scope of the intended legislation. From the examination which the Department has made and which the committee made, we do not find the condition to exist that the gentleman relates. I may say to the gentleman from Ohio, assuming a man and an American woman, or an American man or an American woman, entered into such a conspiracy, if it is for the purpose of evading the law they are guilty of perjury, and can be convicted and their citizenship canceled under the 1917 act and the 1929 act.

Mr. Jenkins of Ohio. Would the gentleman object to an amendment when we come to the proper place in the bill? Let us pass an amendment to the effect if and when she does file that petition and the petition is granted, then and at that time the man shall be immediately deportable.

Mr. Dickstein. Well, this provides for immediate deportation.

Mr. Jenkins of Ohio. Where does it provide for that?

Mr. Dickstein. The point is you cannot deport a man who has perpetrated a fraud on the other side with an American woman until that man gets into this country and the woman institutes proceedings and establishes fraud in a court of record.

Mr. Jenkins of Ohio. We have developed the situation to this point: I can see where the wife could take advantage of this situation. This would be a wonderful op-

portunity to do what the gentleman is trying to prevent. When she finds that this fellow will not carry out his agreement and that he has come into the country for this purpose, when the court has found such a condition to exist and grants a divorce, that fellow ought to be deportable. If she does not want him, and she brought him here, we do not want him either. Let us get rid of him.

[Here the gavel fell.]

Mr. Jenkins of Ohio. Mr. Speaker, I ask unanimous consent to proceed for 5 additional minutes.

The Speaker. Is there objection to the request of the genleman from Ohio?

There was no objection.

Mr. Jenkins of Ohio. Mr. Speaker, I want to develop the thought a little further. I think we can supply an amendment which will not hurt this bill but, on the contrary, will strengthen it a lot. We will find the place in this bill and insert just one simple amendment. I am not trying to delay the bill, I do not want to be put in the position of being against the bill, and I do not want to oppose it, but I think while we are at it we ought to put some teeth in these things. The women in these cases may not be to blame. Every time we have amended the law in this respect we have provided that a man may bring his wife in, but that the woman could not bring the husband in. Why? Because, in fact, we have said that the woman is the weaker of the two and is more susceptible to blandishments at the hands of man. It is thought that it would be pretty hard for a woman to induce a man to marry her for the purpose of assisting her to enter unlawfully, but it is easy for a man with a little money to come to this country on a visit, or acting through an emissary in this country to say to a woman: "You go

through this performance with me. It will all be perfunctory. Here is your thousand dollars and when I get there everything will be all right. I have paid you off."

[3015]

My amendment should provide, when she comes to that place that she finds he is not going to go ahead with the marriage, and the immigration officials find both of them have conspired and that the marriage has never been carried out, with the result that the immigration officials have been defrauded, they should have a right to put that man in the deportable class and send him out of the country.

Mr. Dickstein. I am willing to go as far as I can, but I want to call the gentleman's attention to the language of section 3 of the bill, which clearly states the processes—how the proceeding shall start and how it shall terminate. This language has been accepted by the Department of Labor and has been accepted by the members of the committee on both sides. The committee is simply trying to do its best to find a solution for a number of fraudulent marriages by "counts of no account," by so-called barons and a lot of highbrows, who come from little 2-by-1 countries and get into this country by subterfuge and fraud through marrying attractive American citizens. All we say in the bill is that, upon a decree of a court establishing this fraud, deportation is mandatory. Why does the gentleman want to change that?

Mr. Taylor of Tennessee. Mr. Speaker, a parliamentary inquiry.

The Speaker. The gentleman will state it.

Mr. Taylor of Tennessee. I am the ranking minority member of the committee, and, as I understand it, I have control of time on the minority side.

The Speaker. The Chair calls the attention of the gentleman to the fact that unanimous consent having been obtained by the gentleman from New York [Mr. Dickstein], we are considering this bill in the House as in the Committee of the Whole, and we are proceeding under the 5-minute rule; therefore, the gentleman cannot yield time. He may be recognized for 5 minutes and have his time extended by unanimous consent of the House.

Mr. Jenkins of Ohio. May I say I do not want to defeat the desire of the gentleman from Tennessee [Mr. Taylor] to get plenty of time, because we want to have plenty of time on this bill. There ought to be no hurry about it.

Mr. Speaker, I offer an amendment at the end of section 2 to this effect:

When such immigrant refuses to carry out his marital agreements, he shall then become immediately deportable after the approval of the Secretary of Labor.

Mr. Dickstein. Mr. Speaker, will the gentleman yield to me for a question?

Mr. Jenkins of Ohio. Yes; I yield to the gentleman.

Mr. Dickstein. Suppose the man had not perpetrated any fraud. Would not the method provided in this bill, that the wife must first apply to a court and establish that a fraud has been committed, be the safest way to provide for that?

Mr. Jenkins of Ohio. My purpose in offering this amendment is to put the amendment in the bill where the language is not perfect at all, so it will be a flag to the Senate when this bill gets over there which will give them to understand the purpose of the House is to clean this thing up. We want these people to understand that

this is an important matter, and if they practice fraud they should not profit by it.

[Here the gavel fell.]

Mr. Taylor of Tennessee. Mr. Speaker, this bill was reported out of the Committee on Immigration and Naturalization by a unanimous vote. I can find no objection to it insofar as it goes. It does not apply to bona-fide marriages which are made between nonquota immigrants and citizens of the United States. However, if it were determined after the marriage that the nonquota immigrant had in mind the perpetration of a fraud in order to obtain a visa to enter the United States, the court then would hold the marriage void from the beginning, and immediately and automatically, under section 3 of this act, such immigrant would become subject to deportation. This bill has no application whatever to bona-fide marriages contracted between foreigners and natives of this country.

Mr. Colmer. Mr. Speaker, will the gentleman yield?

Mr. Taylor of Tennessee. I yield.

Mr. Colmer. Is it not a fact the bill is in no sense a proposal to let down the bars, but is rather to restrict immigration?

Mr. Taylor of Tennessee. Absolutely so.

I do not think the amendment suggested by my colleague from Ohio would in any way help this legislation. I think, however, his amendment would seriously complicate the bill and probably render it invalid.

Mr. Dickstein. Mr. Speaker, will the gentleman yield?

Mr. Taylor of Tennessee. I yield.

Mr. Dickstein. If the gentleman from Ohio will let the bill go through without amendment, the committee

would be glad to collaborate with him on any amendment he thinks ought to be added, and we will present such amendment to the Senate committee considering the matter at the proper time.

Mr. Jenkins of Ohio. If the committee will permit this amendment, I think it will not hurt anything but will help.

Mr. Speaker, I offer an amendment, which I send to the desk.

The Clerk read as follows:

Amendment offered by Mr. Jenkins of Ohio: On page 3, after line 3, insert "When it appears that the immigrant fails and refuses to fulfill his promises for a marital agreement made to procure his entry as an immigrant, he then becomes immediately subject to deportation."

Mr. Jenkins of Ohio. Mr. Speaker, I think we have gone into this matter far enough. I am not saying this amendment is etymologically perfect, but it is the best I can do at this time. We must not waste time. If there are any corrections to be made on it, they can be made in the Senate.

The purpose of the amendment is to cover this situation:

If the woman enters into a fraudulent agreement to marry, she and the man are, of course, both fraudulently so contracting, and the man should be sent out as soon as the fraud is discovered. But if the woman enters into the agreement innocently, and then the man defrauds her, she can resort to the courts of this country to have herself freed. When this has been done, the man ought not to be allowed to walk the streets of this great country, but should be deported.

Mr. May. Mr. Speaker, may I suggest a modification of the gentleman's amendment? Where he says "fails

and refuses," I suggest the word "or" be substituted for "and."

Mr. Jenkins of Ohio. That is a good suggestion. I accept it. "Fails or refuses."

Mr. Dickstein. Mr. Speaker, I rise in opposition to the amendment.

Some Members of the House have charged a number of times that I am not bringing out restrictive legislation. Far be it from that. I have always tried to bring about restriction where restriction was necessary. I think this is one of the bills we should pass in its present form.

I call your attention to the language of section 3:

That any alien who at any time after entering the United States is found to have secured either non-quota or preference-quota visa through fraud, by contracting a marriage which, subsequent to entry into the United States, has been judicially annulled retroactively to date of marriage, shall be * * * deported.

I believe the language is proper as it is. I have no objection to accepting the gentleman's amendment, but may I say to the gentlemen who believe in this kind of a restriction, I hope the gentleman will withdraw his amendment and let the language stay as it is, in its proper place and in its proper form, as approved by the Department. If the gentleman insists upon the amendment, I shall offer no objection to it, but I am afraid it will hurt the bill. If the gentleman believes such frauds as this should be restricted, I think for the sake of this legislation he should withdraw his amendment.

Mr. Colmer. Mr. Speaker, I move to strike out the last word.

Mr. Speaker, I am in sympathy with the thoughts which impel the gentleman from Ohio to offer this amendment.

[3016]

As a member of this commitee, it is largely my purpose, as it is the purpose of the gentleman from Ohio, to try to restrict the immigration laws rather than to loosen them. However, I am afraid the gentleman in offering his amendment has in the short time he has had to study the bill misconstrued the purpose of it. I am afraid his motives have outweighed his judgment in the brief opportunity he has had to consider the bill.

Section 3 of the bill does exactly what the gentleman has in mind, but the language which he has offered in his amendment is contrary to section 3 and is inconsistent therewith. Therefore, I hope the amendment may be withdrawn, or that, if not withdrawn, it may be voted down.

Mr. Starnes. Mr. Speaker, will the gentleman yield for a question?

Mr. Colmer. I yield to the gentleman from Alabama.

Mr. Starnes. I think the purpose of the gentleman from Ohio [Mr. Jenkins] is to safeguard fraudulent entries without waiting for an annulment by the courts; in other words, it would be possible for a couple to enter into a fraudulent conspiracy, and the man or woman who has secured entrance into this country in such manner could not be deported until there had been a judicial annulment of the marriage.

Mr. Colmer. I may say to the gentleman that I did not so construe the amendment.

Mr. Dies. Mr. Speaker, will the gentleman yield?

Mr. Colmer. I yield?

Mr. Dies. Is it not a fact that under existing law, where there is a conspiracy, the alien is deportable now?

Mr. Dickstein. That is what I have stated.

Mr. Dies. And under your bill you require a judicial determination of the question of fraud before he is deportable.

Mr. Dickstein. Insofar as marriage is concerned.

Mr. Dies. Will simply a divorce decree make him deportable or does the court affirmatively have to find fraud?

Mr. Dickstein. The action itself is based upon fraud.

Mr. Dies. But is a mere decree of divorce sufficient?

Mr. Dickstein. Any decree of divorce based on fraud will automatically take such alien and send him back to his native land.

Mr. Jenkins of Ohio. Mr. Speaker, I rise in opposition to the pro forma amendment.

Mr. Speaker, I think this amendment should be adopted and I am pleased that the gentleman from New York [Mr. Dickstein] has indicated he has no serious opposition to it, because we are both trying to do the same thing. Let us allow the amendment to go through, and, if we find that the language is inconsistent, when it gets over to the Senate we can correct it.

The immigration laws of our country are very complex. There is no question about that, and I defy anyone, no matter how expert he may be on immigration law, to take one of these bills or the pending bill and be able to state just how an amendment would apply, because of the complexity of the laws. This bill refers to section after section, and to know how these will intermesh with each other when new legislation is proposed is more than anyone can tell without

a chance to study them carefully. This is what my amendment does. It simply provides that whenever any alien is permitted to enter this country upon certain respresentations as to his present or intended marital relationships, and later it is discovered that he has made misrepresentations, he is then subject to deportation. Why should he not be deported? To whom does he make such misrepresentations? He makes them to the American officials in a foreign country. He deceives our own immigration officials there and as soon as they find he has deceived them or has practiced deceit, why should they not have the authority to say to him, "You have deceived us, you have lied to us, and now you are in the deportable class and we are going to send you back." What is the use of waiting for a court decree? As soon as they find out he has misrepresented basic and cardinal facts in the statement which he has to file, what is the use of temporizing with him? Let us say to him that he cannot act in that way with us, and that we will put him in the deportable class, and when his time comes we will send him back to the country from which he came.

Mr. Dies. Mr. Speaker, will the gentleman yield?

Mr. Jenkins of Ohio. I yield.

Mr. Dies. Under existing law, in the case of any marriage that is fraudulent, where both parties participated in the fraud, such action makes the alien deportable. As I understand the intention of the gentleman who introduced this bill, it is to make it a deportable offense where only one party is guilty of fraud. What I am wondering about is whether or not, under the language of the bill, the gentleman accomplishes what he has in mind.

Mr. Jenkins of Ohio. I hope I do. I have done the best I can on the spur of the moment; and in any event,

this will be a flag to the Senate and the Senate will understand what this House wants done. We give these people a great privilege when we offer them a chance to become American citizens. They cannot trifle with this priceless privilege. Whosoever does cannot complain if his conduct brings down upon his head a withdrawal of the privilege.

Mr. Englebright. Mr. Speaker, I move to strike out the last two words.

I do this, Mr. Speaker, for the purpose of asking the chairman of the Committee a question, if he cares to enlighten me.

Does this bill cover the situation where a nonquota immigrant or a quota immigrant who might be in this county on a visitor's permit and contracts a marriage with an American woman, who afterward would make application for him to remain or stay in the county?

Mr. Dickstein. It would work both ways. What we were talking about was an alien who marries an American citizen and comes over here to America. The gentleman is now talking about an alien who would come into this country and contract a marriage by fraud.

Mr. Englebright. Exactly.

Mr. Dickstein. This does not permit him to stay in this country. He has to go back and the woman would have to bring him back again. She would have to file a petition with the Department of Labor setting forth the facts and he would have to comply with the immigration law. If a man contracted a marriage in this country or abroad only for the purpose to evade the immigration law, he would be subject to deportation.

The pro-forma amendments were withdrawn.

The Speaker. The question is on the amendment offered by the gentleman from Ohio.

The question was taken; and there were on a division (demanded by Mr. Jenkins of Ohio)—ayes 58, noes 49.

So the amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.